ORIGINAL

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November 8, 1999

EX PARTE OR LATE FILED

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, NW, Room 222
Washington, D.C. 20554

Re: Written Ex Parte in CC Docket No. 98-147

Dear Ms. Salas:

This is to inform you that BellSouth Corporation has made the attached written ex parte to Lawrence E. Strickling. I have also sent copies by facsimile to Chairman William Kennard, Commissioner Susan Ness, Commissioner Michael Powell, Commissioner Harold Furchtgott-Roth, and Commissioner Gloria Tristani. Commission staff to whom I have sent copies of this letter by facsimile include Dorothy Atwood, Linda Kinney, Kyle Dixon, Rebecca Beynon, Sarah Whitesell, Christopher Wright, Sonja Rifken, Robert Atkinson, Carol Mattey, and Staci Pies.

Pursuant to the Commission's rules, I am filing two copies of this notice and that

written ex parte presentation and ask you to include both in the record in CC Docket No. 98-147.

Sincerely,

Kathleen B. Levitz

Attachment

cc: Lawrence E. Strickling (w/o attachment)
Chairman William Kennard (w/o attachment)
Commissioner Susan Ness (w/o attachment)
Commissioner Michael Powell (w/o attachment)
Commissioner Harold Furchtgott-Roth (w/o attachment)
Commissioner Gloria Tristani (w/o attachment)
Dorothy Atwood (w/o attachment)
Linda Kinney (w/o attachment)
Kyle Dixon (w/o attachment)
Rebecca Beynon (w/o attachment)
Sarah Whitesell (w/o attachment)
Christopher Wright (w/o attachment)
Sonja Rifken (w/o attachment)
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WRITTEN EX PARTE

November 8, 1999

Mr. Lawrence Strickling
Chief, Common Carrier Bureau
Federal Communications Commission
The Portals
445 12 Street, S.W.
Washington, D.C. 20554

Re: Ex Parte – CC Docket No. 98-147

Dear Mr. Strickling:

Competitive local exchange carriers ("CLEC") have recently filed ex partes requesting that the Commission require incumbent local exchange carriers ("ILEC") provide line sharing as an unbundled network element ("UNE"). These CLECs, however, would have the Commission ignore the statutory provisions of Section 252 of the Telecommunications Act of 1996 ("1996 Act") and set terms and conditions, *e.g.* timing for implementation, and "interim" prices for such a UNE.

Specifically, some proposals suggest that the Commission should set a time period, such as six months, within which ILECs must begin provisioning line sharing. Other proposals request that the Commission set a maximum "interim" price that ILECs can charge a CLEC for line sharing during the pendency of carrier negotiations under section 252 of the 1996 Act. This price would not include costs of provisioning such as operating systems changes, network changes, or training. The price would include only the cost for splitters, cross connects, and loop costs to the extent that the ILEC allocates such costs to its own ADSL product. Such conditions, if ordered, would not only be a direct violation of Section 252 of the 1996 Act, but also would undermine its very purpose and intent.

In Section 252 Congress provided a roadmap that is to be followed for the provisioning of UNEs. This roadmap anticipates that a negotiation and agreement between the CLEC and the ILEC under the supervision of the state commission determine the terms and conditions under which UNEs will be made available. The ILECs have an obligation to negotiate this agreement in good faith[1] and Section 252 provides detailed procedures that must be followed to ensure that the negotiations are carried out in a timely and fair manner.

If the Commission prescribes a time frame within which line sharing must be implemented and effectively sets maximum prices that ILECs can charge for this service, negotiations will be tainted. Clearly, a CLEC will have little incentive to negotiate any price other than one that is below the ILECs' cost – which is exactly what the above-suggested price will be. Moreover, any incentive a CLEC may have to accept a different price is lost if the CLEC knows the ILEC must provide line sharing within a prescribed time even if agreement has not been reached. Proper negotiations require the parties to begin with a *tabula rasa*. The Commission must realize that predetermined results set by a third party not only do not foster, but in fact severely limit, successful negotiations. Congress undoubtedly did not intend for the Commission to undermine negotiations in this way.

In addition to undermining the intent of Section 252, establishing below cost prices is inconsistent with the statutory obligations of Section 252(d). While BellSouth does not dispute the Commission's jurisdiction to design a pricing methodology, any such methodology must be consistent with the statute. Section 252(d) states:

> Determinations by a State commission of ... the just and reasonable rate of network elements for purposes of [section 251(c)(3)] –
>
> > (A) shall be –(i) based on cost ..., and (ii) nondiscriminatory, and
> > (B) may include a reasonable profit.[2]

Contrary to CLEC assumptions, ILECs will incur significant costs to implement line sharing. These costs can be placed in two categories -- network costs, *e.g.*, splitters, loop, and cross connects, and operational costs, *e.g.* establishment of procedures and OSS modifications for ordering and billing, maintenance and repair, as well as facility rearrangement and training. Any price methodology that does not allow the recovery of both categories of costs, indeed all of the ILECs costs along with a reasonable profit, would clearly violate Section 252(d).

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1 47 U.S.C. § 251(c)(1).

2 47 U.S.C. § 252(d).

Moreover, a methodology that did not allow for the recovery of all costs cannot be statutorily cured by making the costs subject to true-up. This ignores the practical reality of the market place. No matter how diligent CLECs will be in operating their businesses, some will fail. How can an ILEC recover true-up costs from those whose business fails? Additionally, some CLECs will refuse to pay the true-up costs. If the prices an ILEC is receiving on an ongoing basis cover the majority of its costs, risk to the ILEC of non-payment is minimized. If, however, it is receiving an amount well below its cost, the ILEC will be faced with an excessive amount to recover at true-up time. In such a case the ILEC will face accepting an amount less than its costs or face the expense of litigation. In either event, the ILEC will not recovery its costs. Finally, by not allowing the ILEC to recover a substantial amount of its cost until the true-up date the Commission would be compelling the ILEC effectively to assume the role of a financier to the CLEC. The time value of money to the ILEC incurred as a result of this financing will never be recovered by the ILEC.

BellSouth is committed to implementing all rules lawfully established by the Commission. BellSouth urges the Commission to adopt an order consistent with the letter and spirit of Section 252, an order that contains neither deadlines nor pricing rules inconsistent with that statutory provision.

If you have any questions regarding BellSouth's position, please call me at 202.463.4113.

Sincerely,

Kathleen B. Levitz

Kathleen B. Levitz